

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

UNITED STATES OF AMERICA,	:	Docket No. 0208 1:S1 13 CR 282-01 (JSR)
	:	
v.	:	
	:	
EDGAR PALTZER,	:	Sentence Date: 03/21/2018
	:	
Defendant.	:	

DEFENDANT'S PRESENTENCE MEMORANDUM

I. Background

Edgar Paltzer's sentencing is scheduled before the Honorable Jed Rakoff on March 21, 2018. This sentence will occur almost five years after Mr. Paltzer's indictment and guilty plea. Since April 2013, Mr. Paltzer has extensively cooperated with the United States, pled guilty to the offenses charged in a superseding indictment, testified at a trial, and fulfilled every aspect of his cooperation agreement.

II. Mr. Paltzer's Response to the Indictment

Mr. Paltzer was not aware that he was under investigation by the United States government. He first became aware of the prosecution on April 17, 2013 by way of a link to a press release contained in an email from the managing partner of his Zurich law firm. Despite the fact that he could

not be extradited from Switzerland to the United States, Mr. Paltzer immediately resolved to travel to the U.S., face the charges and cooperated with the government's investigation. He immediately contacted counsel who in turn promptly contacted the United States Attorney's Office. Counsel communicated to the government that Mr. Paltzer was willing to come to the U.S. and cooperate without any commitment from the government regarding his bail or sentence. Mr. Paltzer cooperated with the government from July 2013 through the present. The extent of his cooperation is set forth in the government's 5K1.1 filing.

After the U.S. government's investigation of UBS became public, Mr. Paltzer actively tried to remedy his and his clients' criminal conduct. He advised his clients who had undisclosed accounts to make a voluntary disclosure or report the accounts by way of the IRS Offshore Voluntary Disclosure Program. As a result of both the former clients' participation in the OVDP and Mr. Paltzer's cooperation regarding those who did not participate in the OVDP, it is believed that all of his clients' previously unreported tax has now been paid in full.

Mr. Paltzer has set the gold standard for Swiss professionals not subject to extradition to deal with their criminal conduct and with charges

brought by the U.S.¹ It is believed that his voluntary surrender and his cooperation encouraged others to follow his example.

III. Impact of the Decision to Plead and Cooperate

Many thousands of Swiss professionals assisted U.S. persons in establishing and maintaining undeclared Swiss accounts. It is likely that Mr. Paltzer was the first such professional to recognize publically that such assistance violated U.S. law. His indictment, plea and cooperation were the subject of worldwide press.² At home he was hypocritically viewed as the only Swiss professional who did something wrong; why else would he plead guilty? Anyone who associated with him was assumed guilty of something.

¹ Mr. Paltzer's conduct is contrasted with at least seven Swiss defendants in this district charged in Swiss bank related prosecutions who remain fugitives. See: *United States v. Singenberger*, 11 CR 620 (Filed 7/21/11), *United States v. Keller*, 12 CR 2 (Filed 1/3/12), *United States v. Huppi*, 12 CR 962 (Filed 12/19/12), *United States v. Gisler*, 11 CR 662 (Filed 8/4/11), *United States v. Berlinka*, 12 CR 2 (Filed 1/3/12), *United States v. Frei*, 12 CR 2 (Filed 1/3/12) and *United States v. Dunki*, 14 CR 747 filed 11/13/14).

² *Prosecutors Charge Swiss Lawyer* – The Wall Street Journal, *U.S. Charges Swiss Banker* – Shenzhen Daily, *U.S. Charges Swiss Banker and Attorney* – Daily News-South Africa, *New York Lawyer Accused of Helping Tax Avoiders*- domain-b India, *Swiss Lawyer Pleads Guilty...* - Deutsche Presse - Agentur – Germany, *Swiss Lawyer Pleads Guilty...* WMI Company News – UK, *Swiss Lawyer ... Posts Bail* – Agence France Presse – France.

Edgar's name and picture have been headlines in the Swiss press. A Lexis search of "Edgar w/3 Paltzer" produces more than 200 articles about the prosecution. A Google search for "Edgar Paltzer" produces over 1,300 results regarding his indictment and decision to plead guilty and cooperate.

Consequently, he was ostracized by the Swiss banking and professional community. He was immediately removed from the law firm where he had been a partner. He was expelled from professional associations throughout the world. Business referrals dried up. His business income declined substantially. Long-time business and personal banking relationships were terminated. Credit cards were cancelled in the middle of a family vacation. The home mortgage was cancelled. So-called friends sought the other side of the street when they saw him (or his family) coming. Mr. Paltzer was “dis-invited” to business social functions. “Unfortunately, due to a conflict of interest with some other attendees we feel that on this occasion it would not be appropriate for you to attend”. Exhibit A.

Mr. Paltzer has suffered considerable collateral damage and hardship, particularly in his home country Switzerland where society has over the centuries been unforgiving to prominent citizens who have in some way “failed”. Notwithstanding the impact of his decision to assist the U.S. government, Mr. Paltzer does not regret doing so.

IV. Mr. Paltzer’s Letter to the Court

Attached as Exhibit B is Mr. Paltzer’s letter to the court. In part, Mr. Paltzer writes:

I fully accept responsibility for my conduct. ... I have assisted the US authorities to the largest extent possible ... I hope that this cooperation might be accepted as a form of redress of the harm done.

Exhibit B.

V. Mr. Paltzer Is a Devoted Husband and Father

Mr. Paltzer has been married to his wife Gabriele for 31 years. The Paltzers have three children age 27, 24 and 16. The Paltzers are a close-knit family and have always resided in Switzerland. Despite the family's concern for Edgar's freedom, they fully supported Edgar's decision to cooperate immediately with the prosecution and to travel to New York to face the charges. Edgar's indictment and cooperation has been subject to wide media and internet attention and to negative social comment. Nonetheless, the family remains committed to one another and to Edgar's decision to cooperate. The family's letters to the court in support of Edgar are attached as Exhibit C³.

³ The Paltzers are very protective of their three children and that concern has been heightened given the negative publicity Mr. Paltzer has received. Since this presentence memorandum is a matter of public record, the Paltzers were concerned how any heartfelt expression of concern for their father might be misrepresented in the social media. Accordingly, the three Paltzer children, who completely support their father's decisions in this matter, have revised their original letters and provided new identical "generic" letters supporting their father.

VI. Letters from Friends in Support of Edgar Paltzer

Attached as Exhibit D, are letters to the court in support of Edgar Paltzer. Edgar has not shied away from admitting his errors to his friends. For example:

... he consistently acknowledged his actions, his intention to assist the United States Authorities in their prosecutorial goals and his acceptance of his personal responsibility.

David Hardy, Exhibit D, pages 1 - 2.

... [Edgar] and I met the following day [after press reports of the indictment] to have an extensive talk... Right from the beginning he said that he would confront any law procedure and face any reproaches. ... When I further asked whether he now would ... hide away within Switzerland and stop traveling, he said without any reluctance: "No I will travel to the USA and confront the accusations in a fair legal procedure. ... I accept responsibility ..."

Yves Kugelman, Exhibit D, pages 3 & 4.

On speaking to him...he made it clear to me that he had taken actions which he knew (or should have known) were illegal under U.S. law and he accepts full responsibility for having done so.

Rashad Wareh, Exhibit D pages 5 & 6.

VII. Contribution to the Community

Edgar has been supportive of charitable and cultural activities both within and outside Switzerland. For instance, David Hardy, a friend for many years writes about Edgar's efforts to assist a malaria clinic in Cambodia. Exhibit D, pages 1 & 2. He writes:

During our IBA Tax Section Officers Retreat in ... Cambodia, Edgar arranged for us to visit [a] malaria clinic established there under the Kantha Bopha Foundation. ... [the doctor who ran the clinic] was concerned that the work his foundation was performing in Cambodia was resting disproportionately on the generosity [of] his Swiss contributors. Edgar, consistent with his personality, was quick to lead a group of Europeans and North American lawyers who sought to establish a multi-national foundation to broaden the base of support for [the clinic].

Exhibit D, pages 1-2.

VIII. Comparable Sentences

Among Swiss professionals, it is believed that Mr. Paltzer was the very first to voluntarily appear in the United States without any pre-conditions. He came to the Southern District of New York on August 14, 2013 without any agreement relative to what, if any, bail would be arranged and cooperated with the government without any agreement as to what benefit he would derive from his cooperation. Mr. Paltzer's situation is

unique. A review of cases dealing with Swiss professionals indicted in the United States generally reveals that many have refused to meet those charges⁴. Swiss professionals who have met those charges have in almost all cases been sentenced to a period of probation.⁵

The total offense level is 21 providing for a recommended sentence of 37 to 46 months. In this situation, a downward departure is warranted given the cooperation Mr. Paltzer has provided as reflected in the government's 5K1.1 submission. In the event that a departure is not found to be warranted, it is respectfully requested that the Court engage in a variance from the sentencing guideline range.

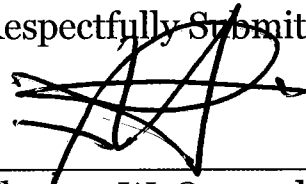
⁴ In addition to those listed in footnote 1, Swiss bank related indictments in other districts of Swiss professionals in which the defendant is a fugitive include: *United States v. Schaerer*, 11 CR 95 (ED Va. filed 2/23/11), *United States v. Rickenbach*, 09 CR 60210 (SD Fl. filed 8/20/09), *United States v. Mathis*, 10 CR 260 (ED Va. filed 7/15/10), *United States v. Almog*, 11 CR 00930 (Ca CD, filed 9/29/11), *United States v. Agustoni*, 11 CR 95 (ED Va. filed 2/23/11) and *United States v. Adami*, 11 CR 95 (ED Va. filed 2/23/11).

⁵ *United States v. Schumacher*, 9 CR 60210 (SD Fl. filed 8/20/09) (5K1 filed - 5 years probation), *United States v. Lack*, 11 CR 60184 (SD Fl. filed 8/2/2011) (5 years probation), *United States v. Bergantino*, 11 CR 95 (ED Va. filed 2/23/11) (5 K1 filed - 2 years unsupervised probation); *United States v. Gadola*, 10 CR 20878 (SD Fl. filed 12/14/10) (5K1 filed - 5 years probation); *United States v. Bachman*, 11 CR 95 (ED Va. filed 2/23/11) (5K1 filed - 5 years unsupervised probation); *United States v. Dorig*, 11 CR 95 (ED Va. filed 2/23/11) (5K1 filed - 5 years unsupervised probation). Exceptions: *United States v. Birkenfeld*, 8 CR 60099 (SD Fl. filed 4/10/08) (after arrest - 40 months incarceration) and *United States v. Bagios*, 12 CR 60260 (SD Fl. filed 10/16/12) (Agreed sentence - time served 37 days after arrest).

IX. A Probationary Sentence is Warranted

This is Mr. Paltzer's first criminal offense. He lives and works in Switzerland where he grew up, went to school and acquired his professional education. He is a devoted husband and father. He has done all that anyone faced with these charges could do to make amends for his conduct, for which he has accepted full responsibility. Accordingly, it is respectfully suggested that Mr. Paltzer not be sentenced to a period of incarceration.

Respectfully Submitted,



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